1143.

SUPREME COURT OF THE UNITED STATES.

No. 134.

MINERS' BANK OF DUBUQUE, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE SUPREME COURT OF IOWA.

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J. & G. S. Gideon, printers.

UNITED STATES OF AMERICA, *ss:*

The President of the United States, to the honorable the judges of the supreme court of the United States for the Territory of Iowa, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, before you, between the President, Directors and Company of the Miners' Bank of Dubuque, plaintiffs in error, and the United States, at the relation of James Grant, district prosecuting attorney, defendants in error, in a proceeding, on information, in nature of quo warranto, a manifest error hath happened, to the great damage of the said President, Directors and Company of the Miners' Bank of Dubuque, as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and custom of the United States should be done.

Witness the honorable , chief justice of the said Supreme Court, this 5th day of February, in the year of our Lord one thousand eight hundred and forty-six.

WILLIAM THOMAS CARROLL,
Clerk of the Supreme Court of the United States.

Allowed by—

The United States of America, to Avery Thomas, prosecuting attorney in the 3d judicial district, Iowa Territory.

SIR: You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington city, on the first Monday of December (1846) next, pursuant to a writ of error filed in the clerk's office of the supreme court of Iowa Territory, and in a case wherein the President, Directors and Company of the Miners' Bank of Dubuque are plaintiffs in error, and the United States, upon the relation of James Grant, prosecuting attorney, is defendant in error; to show cause, if any there be, why the judgment rendered against the plaintiffs in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Thomas S. Wilson, assistant judge of the supreme court of Iowa Territory, this first day of June, A. D. 1846.

THO. S. WILSON,
One of the associate judges of the supreme court Iowa Territory.

DUBUQUE, IOWA TERRITORY, 1*st June*, 1846.

I, John Foley, deputy marshal for the Territory of Iowa, certify that the within notice was served by me on Avery Thomas, prosecuting attorney in the 3d judicial district, Iowa Territory, by delivering to him a copy hereof, this first of June, 1846.

G. S. BAILY, *Marshal.*
By JOHN FOLEY, *Deputy.*

UNITED STATES OF AMERICA, *Territory of Iowa, ss:*

Pleas held before the honorable Charles Mason, chief justice, Joseph Williams and Thomas S. Wilson, associate justices, composing the supreme court for Iowa Territory, at Iowa city, in said territory, on the 26th day of January, A. D. 1846.

Preamble.

An agreed case from the judgment of the district court of Dubuque county.

THE PRESIDENT, Directors and Company of the Miners' Bank of Dubuque, plaintiffs in error,
against
THE UNITED STATES, on the relation of James Grant, district prosecutor, defendants in error.

Be it remembered, that heretofore, to wit, on the 5th day of January, A. D. 1846, the said plaintiffs in error, by their attorney, filed in the clerk's office of the supreme court for the territory aforesaid, the following transcript of the record and proceedings had between the parties aforesaid, in the district court of Dubuque county, to wit:

Transcript from district court.

TERRITORY OF IOWA,
Third judicial district, county of Dubuque, ss:

Pleas and proceedings at the court house in Dubuque, in the county of Dubuque, before Thomas S. Wilson, judge of the district court for the third judicial district, in and for the county and territory aforesaid, in a certain case wherein the United States, at the relation of James Grant, district prosecutor, are plaintiffs, and the President, Directors and Company of the Miners' Bank of Dubuque are defendants.

Be it remembered, that heretofore, to wit, at the August term of said court, 1845, and on the 16th day of August, the said plaintiffs, by

their attorney, James Grant, and the said defendants, by their attorney, Timothy Davis, filed in said court a written agreement in the words and figures following, to wit:

Agreement.

Information in nature of quo warranto.

THE UNITED STATES
vs.
PRESIDENT, Directors & Co. of the Miners' Bank of Dubuque.

It is agreed in this cause, that service of process shall be waived by the defendants, and that they will appear and plead at the next session of the Dubuque district court.

The pleadings are to be so framed as to try the validity of the act of the last session of the Iowa Legislature of Iowa, purporting to repeal the charter of the Miners' Bank of Dubuque, and the parties agreed to go to a trial at said term of court.

JAMES GRANT, *Dist. Pros.*
TIMOTHY DAVIS,
Attorney for the Bank.

At the November term of said district court, the parties appeared, by their attorneys, and filed in said cause pleadings, in the words and figures following, to wit:

Information.

Territory of Iowa, Dubuque district court, November term, 1845.

James Grant, district prosecutor of the third judicial district, who prosecutes for the United States, on leave granted, comes into said district court of Dubuque county, at the court house in Dubuque, on the first Monday in November, in the year of our Lord one thousand eight hundred and forty-five, and for said United States gives the court to be informed and understand, that John Wharton, Patrick Quigly, Robert Waller, John Thompson, Peter Waples, Jesse P. Farley, and Timothy Davis, for the space of two months last past and more, have used, and still use, without any legal authority, the liberties and franchises of President, Directors and Company of the Miners' Bank of Dubuque, and discount bills, loan money, buy and sell bills of exchange, and do all other such acts and things as bodies corporate for banking usually do. All which privileges, liberties, and franchises the said defendants have usurped, and still do usurp, upon said United States, to the great damage and prejudice thereof. Whereupon the said attorney prays the advice of the court in the premises, and due process of law against said defendants, to answer to said United States, by what warrant they claim to have, use, and enjoy the liberties, privileges, and franchises aforesaid.

JAMES GRANT, *Dis. Pros.*

To which said defendants filed the following plea:

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Defendants' plea.

Territory of Iowa, Dubuque district court, November term, 1845.

UNITED STATES, on relation of the district prosecutor,
vs.
JOHN WHARTON & ALS., the President, Directors and Company of the Miners' Bank of Dubuque.

And the said John Wharton, Patrick Quigley, Robert Waller, John Thompson, Peter Waples, Jesse P. Farley, and Timothy Davis, President, Directors & Co., &c., as to the said liberties, franchises, and privileges of the said President, Directors and Company of the Miners' Bank of Dubuque say, that by an act of the Legislature of Wisconsin, approved on the thirtieth day of November, in the year of our Lord one thousand eight hundred and thirty-six, which act, with alterations, was approved by Congress on the third day of March, A. D. in the year of our Lord one thousand eight hundred and thirty-seven, said President, Directors & Company are duly incorporated as a body politic and corporate, with the privileges, liberties, and franchises aforesaid; that by an act of Congress in force on the twelfth day of June, in the year of our Lord one thousand eight hundred and thirty-eight, the Territory of Wisconsin was divided, and the Territory of Iowa formed therefrom, and by this warrant the said defendants have, and during the time in said information mentioned, and still use, the liberties, franchises, and privileges aforesaid, as they well might, and still may; without this that said defendants have usurped, or do now usurp said liberties, franchises, and privileges, in manner and form as by said information is supposed, all which the said defendants are ready to verify; and wherefore they pray judgment, and that said liberties, franchises, and privileges, above by them claimed, may be allowed and adjudged them, and that they may be hence dismissed, &c.

DAVIS, *Attorney for bank.*"

Plaintiffs' replication.

To which plea the plaintiffs filed the following replication, to wit:

TERRITORY OF IOWA:

Dubuque district court, Nov. term, 1845.

UNITED STATES on the relation of the district prosecutor,
vs.
THE PRESIDENT, DIRECTORS & Co. of the Miners' Bank of Dubuque.

And the said plaintiffs, for replication to said plea of said defendants, say, that the act of the legislature of Wisconsin, by which said defendants claim the liberties, franchises, and privileges aforesaid, by an act of the legislature of Iowa Territory, within whose jurisdiction the said

corporate body existed, after the division of the Territory of Wisconsin, in force the twenty-first day of May, in the year of our Lord one thousand eight hundred and forty-five, the said liberties, privileges, and franchises were repealed, disallowed, and declared for naught.

And this he is ready to verify; wherefore he prays judgment, &c.

JAS. GRANT, *dist. pros.*

Defendants' rejoinder.

To which the said defendants filed the following rejoinder, to wit:

"TERRITORY OF IOWA, *county of Dubuque:*

District court, November term, 1845.

UNITED STATES, at relation of district attorney,
vs.
PRESIDENT, Directors & Company of Miners' Bank of Dubuque.

Information in nature of quo warranto.

And the said defendants, as to said replication of the plaintiffs, say, that they ought not to be barred of said liberties, franchises, and privileges, by reason of any thing in said plea alleged, because they say that said supposed act of the legislature of the Territory of Iowa, whereby the charter of said defendants purports to be repealed, was passed by said legislature without any notice to those defendants, or any opportunity afforded them of being heard in their defence, and without any evidence of the abuse and misuse of any of the liberties, franchises, and privileges aforesaid. And this they are ready to verify; wherefore they pray judgment, &c.

DAVIS, *Attorney for bank.*"

Saturday, November 22d, 1845.

Information in nature of a quo warranto.

THE UNITED STATES, on the relation of the district prosecutor,
vs.
THE PRESIDENT, Directors & Company of the Miners' Bank of Dubuque.

Plaintiffs file demurrer to defendants' rejoinder.

And now, at this day comes James Grant, district prosecutor, and the said defendants, by Davis and Crawford, their attorneys, and the said plaintiffs file their demurrer to the rejoinder of the said defendants; whereupon all and singular the premises aforesaid being seen, and by the court here fully understood, and mature deliberation being thereupon had—

Demurrer sustained.

It appears to the said court that the said rejoinder, and the matters therein contained, are not sufficient in law to bar or preclude the said plaintiffs from having and maintaining their aforesaid information thereof against the said defendants, and that said demurrer ought to be sustained.

Leave given defendants to answer over.

Therefore, it is ordered by the court here, that the said defendants take nothing by their said rejoinder, and that they have leave to amend or answer over to the said plaintiffs' replication, by Monday morning next, at the meeting of the court."

And which demurrer is in the words and figures following, to wit:

TERRITORY OF IOWA:

Dubuque district court, Nov. term, 1845.

UNITED STATES, on relation of district attorney,
vs.
THE PRESIDENT, Directors & Company of the Miners' Bank of Dubuque.

Demurrer

And the said plaintiffs, as to said rejoinder of said defendants, say, that they ought not to be barred from maintaining their aforesaid writ, because they say that said rejoinder, and the matter and things therein stated, are not sufficient in law to bar the plaintiffs from having their aforesaid writ, &c. And this they are ready to verify; wherefore they pray judgment, &c.

J. GRANT, *dist. att'y.*

Joinder in demurrer.

And the said defendants say, that said rejoinder is sufficient in law to bar the plaintiffs from having and maintaining their aforesaid writ, &c. And this they are ready to verify, &c.

DAVIS, *attorney for defendants.*

Clerk's certificate.

TERRITORY OF IOWA, *Dubuque county, ss:*

I, the undersigned, clerk of the district court within and for said county of Dubuque, do certify, that the foregoing is a true transcript of the records and files in said case, as they remain in my office.

In testimony whereof, I have hereunto set my signature and official [SEAL.] seal, this 2d day of January, 1846.

JAMES ROSS WELLS,
Clerk D. C.

And afterwards, to wit, on the 9th day of January, A. D. 1846, the plaintiffs in error, by their attorneys, filed herein the following assignment of errors, to wit:

Assignment of errors.

Supreme court, January term, 1846.—In error.

THE PRESIDENT, Directors & Company of the Miners' Bank of Dubuque, plaintiffs in error,
vs.
THE UNITED STATES, at the relation prosecuting attorney, defendants in error.

Information in nature of quo warranto.

And now, at this day, come the said plaintiffs in error, by their attorneys, and for assignment of errors in the record and proceedings of said case in the court below, show to the court here the following, to wit:

1. That the judgment of the court below, that the demurrer of the plaintiffs below to the rejoinder of the defendants should be sustained, was erroneous, and ought to have been that the same should be overruled.

2d. That judgment upon said demurrer should have been in favor of the plaintiffs in error, and not in favor of the defendants in error.

3. That the judgment in said case should have been rendered in favor of the plaintiffs in error, and not in favor of the defendants in error, by the court below.

DAVIS & CRAWFORD,
Attorneys for plaintiffs in error.

And afterwards, to wit, on the 15th day of January, A. D. 1846, the defendant, by attorney, filed the following joinder in error, to wit:

Joinder in error.

TERRITORY OF IOWA, *ss:*

Supreme court, January term, 1846.

THE UNITED STATES,
vs.
PRESIDENT, Directors & Co. of Miners' Bank.

And now, on this day comes the United States, by their attorney, here in court, and joins in the assignment of error filed by the plaintiffs in error, and denying that there is any error in the record in this cause, or in the decision of the court below, and therefore alleges that the judgment of said court be affirmed in this court.

LEWIS A. THOMAS,
Prosecuting Attorney.

And afterwards, to wit, at a supreme court continued and held in Iowa city, for Iowa Territory, on the said 15th day of January, A. D. 1846.

Cause argued and continued.

This day came the parties aforesaid by their attorneys, and thereupon this cause came on to be heard; and the court having heard part of the arguments of counsel, and not having time to hear the remaining arguments of counsel, the further hearing is ordered to be resumed on to-morrow.

And afterwards, to wit, at a supreme court, continued and held as aforesaid, on the 16th day of January, A. D. 1846.

Submitted to the court.

In this cause the court heard the arguments of counsel on both sides, and not being sufficiently advised in the premises, took the same under advisement.

And afterwards, to wit, at a supreme court continued and held as aforesaid, on the 26th day of January, A. D. 1846.

Judgment affirming the judgment of the district court.

This day this cause came on for further hearing; and the court being now sufficiently advised in the premises, delivered an opinion affirming the judgment of the court below. It is therefore considered by the court, that the judgment of the court below be affirmed, and that a writ of procedendo issue to the court below accordingly; and it is further considered by the court, that the defendant in error recover of the plaintiffs in error the costs herein expended in this court; and that execution issue for the same.

Appeal granted plaintiffs in error.

And thereupon, on motion of the plaintiffs in error by their attorney, an appeal is granted them from the foregoing judgment of this court to the Supreme Court of the United States, upon their executing bond in the penal sum of $200 00, with good security, to be approved of by the Hon. Thomas S. Wilson, associate justice of this court.

Opinion of the supreme court.

The validity of the late act of the legislative assembly of this Territory, repealing the charter of the Bank of Dubuque, is brought up now for adjudication. On the one side it is contended that all acts of incorporation of this kind may be rightfully repealed whenever, in the opinion of the legislature, the public good requires it. That the primary object for the incorporation of a bank is the public convenience; that the furnishing of a circulating medium, to serve as money, is a high attribute of sovereignty; that if one legislature has the right to delegate this power, another may resume it; and that a bank is only to be regarded in the same light as a public officer of the Government, whose office may be abolished at any time, and the incumbent discharged by an act of the legislature. On the other it is contended that such an act of incorporation is a mere private contract, and for that reason placed beyond the reach of hostile legislation.

The power of our legislation being confined to "rightful subjects of legislation," and the bill of rights, contained in the ordinance of 1737, having declared that the legislature ought not to interfere with private contracts previously formed in good faith, such contracts are just as sacred here as they are under the federal constitution within the States.

The principle is well settled in the States, that a public corporation is always under the control of the legislature; but that a private corporation, or a private grant, is protected from legislative encroachment.

A public corporation is one created for public purposes, though private rights and interests are often therein deeply involved. The charter of a town or city is none the less subject to the legislative will, from the fact that a change therein, or an absolute repeal thereof, will injuriously affect the individual interest of the corporators.

If, therefore, the primary object in the corporation of a bank is the promotion of the public welfare, it is a public corporation, and under the entire control of the public will as expressed through the legislature. But if the chief purpose of such charters is the promotion of private interests, and the conferring of favors upon individuals, the analogy of decisions would seem to point to the conclusion that the legislature would not possess the general power of repeal.

Some of the adjudged cases go far to sustain the former of these views in relation to bank charters. See Bank of Utica vs. Smedes, 3 Cowen, 684, and Young vs. the Bank of Alexandria, 4 Cranch, 384, 388.

But whatever difference of opinion may be entertained on this subject, the right of repeal is clearly unquestionable, where such right is stipulated in the charter itself; even if it is to be regarded as a private contract, it is certainly no breach of that contract to insist upon and enforce its own terms and conditions. It is insisted that the stockholders of the Miners' Bank of Dubuque accepted their charter under such an express stipulation.

The twenty-third section of that charter provides, "that if said corporation shall fail to go into operation, or shall abuse or misuse their privileges under this charter, it shall be in the power of the legisla*ture* assembly of this territory at any time to annul, vacate, or make void, this charter." Was it the intention of the legislature by this provision to reserve to themselves the right of repeal, after by a judicial investigation it had been ascertained that some of the above mentioned contingencies had happened; or is it by a fair construction to be inferred that they intended to reserve to themselves the power of determining upon the happening of those contingencies? We think the latter the most reasonable interpretation of the language used.

Suppose the bank had failed altogether to go into operation, must there have been a trial by jury to ascertain that fact before the legislature could repeal the act of incorporation? Or suppose there had been such an abuse or misuse of the privileges granted, as is contemplated by this provision of the charter, how is a judicial enquiry to be instituted? Would the court act as a committee of the legislature for the purpose of collecting evidence in order to enable the latter to make a decree?

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Where would it find authority for such a course? All judicial proceedings contemplates final judicial action.

If, upon the allegation that the contingencies provided for in the above mentioned clause of the charter had happened, a writ of quo warranto were to issue, and the truth of the allegations should be fully sustained, it would be the duty of the court to annul the charter by its own decree, and not stop short, while in full career, and turn the case for this purpose over to the legislature. Nor can we presume the legislature to have been guilty of the absurdity of reserving to itself the right to repeal a charter, only after the same had been vacated, and declared null and void by a decree of the proper court. It is our duty so to construe all statutes as to give force and meaning to all its provisions, where it is possible so to do. The legislature, through its committees, have the means of investigating facts, and we have little doubt but what, by a proper construction of the repealing power above set forth, they reserved to themselves the right to annul the charter of the bank whenever, through their own appropriate organ, it had been ascertained that any of the contingencies therein provided for had happened. It amounted to an absolute power of repeal, coupled with a legislative pledge that such power should never be exerted only in the cases therein provided.

This view of the case is strengthened by another circumstance. It is a well known historical fact that, at the time of the passage of this act of incorporation, the unqualified right to repeal any bank charter was earnestly contended for by many of the papers and public men in the country. The charter of the Bank of the United States had recently been revived by the legislature of the State of Pennsylvania, and had added much to the warmth and importance of the discussion. It was doubtless for the purpose of setting that question at rest, so far as related to the banks they were about to create, that the legislature of Wisconsin reserved to itself this power of repeal.

Acting within the scope of their authority, their decision is final, and we cannot look behind it. It follows, that the demurrers were properly sustained, and the decree of the district court is accordingly affirmed.

And afterwards, to wit, on the 4th day of May, A. D. 1846, the said plaintiffs in error filed herein the following affidavit, to wit:

Affidavit.

UNITED STATES OF AMERICA, *Territory of Iowa, ss:*

Be it remembered, that on this 5th day of February, 1846, personally appeared before the undersigned, one of the associate judges of the territory aforesaid, Mordecai Mobley, cashier of the Miners' Bank of Dubuque, and makes oath, that in the case of the United States of America, at the relation of James Grant, district attorney, in a proceeding in the nature quo warranto, against the President, Directors and Company of the Miners' Bank of Dubuque, taken to the supreme court of said territory by writ of error, in which court the said President, Directors and Company were plaintiffs in error, and the said United

States were defendants in error, in which case judgment of said supreme court, at the January term thereof, A. D. 1846, was rendered against said plaintiffs in error, the value of the property or amount in controversy, exceeds the sum of one thousand dollars.

M. MOBLEY.

Sworn to and subscribed before me, this 5th of Feb., 1846.

T. S. WILSON,
Associate judge Sup. Ct. I. T.

And on the said 4th day of May, A. D. 1846, the said plaintiffs in error also filed the following bond herein, to wit:

Appeal bond.

Know all men by these presents, that we, the President, Directors and Company of the Miners' Bank of Dubuque, and Mordecai Mobley, and Timothy Davis, are held and firmly bound to the United States of America in the sum of two hundred dollars; to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this 5th day of February, 1846.

Whereas, lately, at the January term of the supreme court of the Territory of Iowa, in the year of our Lord one thousand eight hundred and forty-six, in a suit pending in said court, between President, Directors and Company of the Miners' Bank of Dubuque, plaintiffs in error, against the United States of America, at the relation of James Grant, district attorney, in a proceeding against said plaintiffs in error, in [the] nature of *quo warranto*, the said United States recovered a judgment of said court against the said President, Directors and Company, to reverse which judgment, the said President, Directors and Company of the Miners' Bank of Dubuque have taken a writ of error and appeal to the Supreme Court of the United States, to be held at the city of Washington, on the first Monday of December next. Now, the condition of this obligation is such, that if the said President, Directors and Company of the Miners' Bank of Dubuque shall prosecute their writ of error to effect, and answer all damages and costs, if they fail to make their plea good, then this obligation to be void, else to remain in full force and effect.

President, Directors and Company of the Miners' Bank of Du- [L. S. buque,

By JOHN WHARTON,
President.

M. MOBLEY, [SEAL.]
TIMOTHY DAVIS. [SEAL.]

Approved by me, Feb. 5th, 1846.

T. S. WILSON,
Associate judge Sup. Ct. I. T.

UNITED STATES OF AMERICA, *Territory of Iowa, ss:*

I, George S. Hampton, clerk of the supreme court for Iowa Territory, do hereby certify, that the foregoing pages hereto attached contain a full, true, and complete transcript of the record and proceeding had between the President, Directors and Company of the Miners' Bank of Dubuque, plaintiffs in error, and the United States, on the relation of James Grant, prosecuting attorney, defendants in error, in the said supreme court, as full, true, and complete, as the same remains of record, or on file in my office.

In testimony whereof, I have hereunto set my name and affixed the seal of the said supreme court hereunto; done at Iowa city, this [SEAL.] 15th day of May, A. D. 1846.

GEORGE S. HAMPTON,
Clerk of the supreme court Iowa Territory.

Filed 9th Nov., 1846.